IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3921 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VH VAGHELA - Petitioner(s)
Versus
STATE OF GUAJRAT & 1 - Respondent(s)

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Appearance :
MS BANNA S DUTTA for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
Mr. Dipen Desai, Asst. GOVERNMENT PLEADER for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 31/01/2007

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has

prayed for an appropriate writ, order or direction quashing and setting aside the impugned order dated 28.5.1996 to the extent it is applicable to the petitioner by further directing the respondents to allow the petitioner to discharge his duties as Senior Clerk as if no reversion order is passed against the petitioner. It is further prayed to direct the respondent authorities to modify the seniority list published vide circular dated 15.9.95 (Ann.Q) to the extent the name of the petitioner is shown after Sr. No. 54, i.e., after the name of Shri V.G. Thakker, treating the date of joining of the petitioner as 13.11.1978 and not at Sr. No.168.

2. The facts, leading to filing of Special Civil Application, in nutshell are as under;

It is the case on behalf of the petitioner that the petitioner was recruited in the year 1978 by the Convener to the Departmental Selection Committee, Office of the Director of

Health Services (Health Section) New Civil Hospital, Asarva, Ahmedabad under the Centralised Recruitment Scheme, and by letter dated 28.9.1978 he was allotted to the Director of Medical Services (ESI Scheme), Ashram Road, Ahmedabad. That the petitioner reported for duty at the office of the Director of Medical Services (ESI Scheme) on 13.11.1978 by making a joining report on 13.11.1978. Thus according to the petitioner, the date of joining in Government services by the petitioner is 13.11.1978. The Director of Medical Services issued an Office Order dated 22.11.1978 confirming the above appointment of the petitioner, i.e., 13.11.1978. It is the case on behalf of the petitioner that while in service the petitioner appeared in Pre-Service Training Examination and he passed the same in the year 1982. It appears that while the petitioner was in service the Collector, Gandhinagar issued advertisement for the post of Clerks etc., and as the petitioner was desirous of getting appointment as Clerk in the office of the

Collector, Gandhinagar he applied as according to him the employment under that department could be permanent in nature in view of the fact that certificate dated 17.11.1974 was issued by Special Officer, Gandhinagar. The petitioner was selected and was issued appointment order by the Convener of Departmental Selection Committee and District Collector, Gandhinagar dated 30th September 1982/6th October 1982. That on selection by the Collector, Gandhinagar the petitioner was relieved by the office of Director of Medical Service (ESI Scheme) on 25.10.1982 and the petitioner joined the services in the office of Collector, Gandhinagar on 26.10.1982. It appears that in the year 1984 the petitioner was asked to go for Pre-service Training Examination by the Collector. However, as the petiitoner had already passed the Pre-Service Training Examination when the petitioner was in employment in another department on the application made, the petitioner was granted exemption from appearing in Pre-Service Training Examination.

That the petitioner came to be promoted by office order dated 15.10.1986 to the post of Senior Clerk. It appears that thereafter the department vide circular dated 29.7.1995 issued provisional seniority list showing the position as on 1.1.1995 of the Junior Clerks wherein the name of the petitioner was shown at Sr. No. 55. However there was some mistake in the date and instead of 13.11.1978 the date of appointment of the petitioner of Senior Clerk was shown as 13.12.1978. The petitioner made representation to the authorities by letter dated 16.3.1995. It is the case on behalf of the petitioner that when the final seniority list of Junior Clers cadre was published on 15.9.1995 the name of the petitioner was shown at Sr. No. 168 instead of Sr. No. 55 considering the year of joining of the petitioner as 1982 instead of 1978, i.e., 26.10.1982 instead of 13.11.1978 and accordingly the petitioner was sought to be reverted and therefore the petitioner has preferred the Special Civil Application under Article 226 of

the Constitution of India.

2. Ms. Banna Dutta, learned advocate for the petitioner while relying upon the judgment of the Division Bench of this Court in the case of ***Safimiya G. Malek & Ors. vs. State of Gujarat & Ors.,*** reported in ***1992(1) GLR Page 704,*** has submitted that when the petitioner was selected and appointed under the Centralised Recruitment Scheme and was allotted in another office and when the petitioner was appointed at the office of Collector, Gandhinagar, the period under which the petitioner has served with another department is required to be considered for the purpose of seniority and therefore the respondents ought to have considered the period between 13.11.1978 to 26.10.1982 for the purpose of seniority and could not have ignored his service as Junior Clerk while the petitioner was serving in the office of Director of Medical Services (ESI Scheme). Therefore it is submitted that the final seniority list of Junior Clerks published on

15.9.1995 whereby the name of the petiitoner is shown at Sr. No. 168 instead of Sr. No. 55 should be quashed and set aside and the initial order of reversion should also be quashed and set aside. Therefore, it is requested to allow the present Special Civil Application.

3. Shri Dipen Desai, learned AGP while opposing the present Special Civil Application has submitted that in the facts and circumstances of the present case, the decision relied upon by the petiitoner in the case of ***Safimiya G. Malek & Ors. vs. State of Gujarat & Ors.,*** [supra] cannot be made applicable as in the year 1982 the petitioner applied for fresh appointment in the office of the Collector, Gandhinagar on applications being invited by the Collector and the said appointment was being a fresh appointment it was not an allotment pursuant to earlier selection of the petitioner in 1978 under the Centralised Recruitment Scheme. Therefore it is submitted that when the petitioner had taken a

conscious decision to apply for a fresh appointment in the office of Collector, Gandhinagar in the year 1982 and the employment by way of recruitment in the office of Collector, Gandhinagar, will be more beneficial to him, then in that case his past services in another department cannot be considered. Therefore, when the petitioner was appointed as a fresh appointee in the office of the Collector, Gandhinagar in the year 1982 more particularly on 26.10.1982 the date of appointment as Junior Clerk in the office of Collector, Gandhinagar has rightly been considered as 26.10.1982 and consequently in the final seniority list of Junior Clerks cadre dated 15.9.1995 the petitioner is rightly placed at Sr. No. 168 and accordingly the order of reversion considering the appointment of petitioner as Junior Clerk on 26.10.1982 is just and proper and is not required to be quashed and set aside. Therefore, it is requested to dismiss the present Special Civil Application.

4. Heard the learned advocates appearing on

behalf of the respective parties. It is true that the petitioner was earlier selected in the year 1978 under the Centralised Recruitment Scheme and allotted to the Office of Director of Medical Services (ESI Scheme). When the petitioner was in service the advertisement was given by the Collector, Gandhinagar inviting applications for the post of Clerks, etc., and the petitioner took conscious decision to apply for the said post considering that the same would be more advantageous and beneficial to the petitioner and accordingly the petitioner applied and thereafter was selected and appointment order dated 6.10.1982 was issued to the petitioner. The petitioner thereafter joined the service in the office of the Collector, Gandhinagar, as Junior Clerk on 26.10.1982 itself. The appointment of the petitioner in the office of Collector, Gandhinagar was a fresh appointment and was not an allotment after his selection in the year 1978. The entry of the petitioner in the Collector's office at Gandhinagar as Junior

Clerk was 26.10.1982 and therefore the date of his appointment in the office of Collector is required to be considered as 26.10.1982 and hence no illegality has been committed by the respondents in putting the petitioner at Sr. No. 168 in the seniority list of Junior Clerk's cadre dated 15.9.1995, and considering the date of appointment as Junior Clerk in the office of Collector, Gandhinagar as 26.10.1982. The decision of the Division Bench of this Court in the case of relied upon by the learned advocate on behalf of the petitioner ***Safimiya G. Malek & Ors. vs. State of Gujarat & Ors.,*** [supra] will not be applicable to the facts of the present case. In view of the above, when the initial date of appointment of the petitioner in the cadre of Junior Clerk in the office of Collector, Gandhinagar is to be considered 26.10.1982 the petitioner is rightly shown at Sr. No.168 in the seniority list of Junior Clerks and if the petitioner is to be reverted it cannot be said that there is any illegality committed by the

respondents. There is, therefore, no substance in the present Special Civil Application and the same requires to be dismissed.

5. At this stage, Ms. Banna Dutta, learned advocate for the petitioner has submitted that when the petitioner is serving as Senior Clerk since last 10 years his services may be protected as Senior Clerk. It is required to be noted that the petitioner continued to serve as Senior Clerk pursuant to interim order of this Court. Therefore, the petition is required to be dismissed on merits by holding that the reversion order is not illegal and is not required to be quashed and set aside and the petitioner cannot be continued in the post of Senior Clerk and necessary order of reversion must follow. The petitioner has already enjoyed the fruit of interim relief and though he was not required to be continued as Senior Clerk, he has been continued as Senior Clerk and further illegality cannot be continued. Under the circumstances,

the submission of the learned advocate appearing for the petitioner cannot be accepted.

6. For the reasons stated hereinabove, the petition fails. The date of appointment of the petitioner in the cadre of Junior Clerk in the office of Collector, Gandhinagar, is rightly taken into account as 26.10.1982. The respondents are directed to act accordingly by considering the date of appointment of the petitioner as Junior Clerk as 26.10.1982. The petition is dismissed. Rule is discharged. The interim relief granted earlier stands vacated forthwith. No costs.

[M.R. Shah, J.]

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